

**FILED**

SEP 15 2010

AT 8:30  
WILLIAM J. WALSH  
CLERK

Charles M. Lizza  
William C. Baton  
SAUL EWING LLP  
One Riverfront Plaza, Suite 1520  
Newark, NJ 07102-5426  
(973) 286-6700

*Attorneys for Plaintiff  
Sepracor Inc.*

*Of Counsel:*

Joseph M. O'Malley, Jr.  
Bruce M. Wexler  
David M. Conca  
Eric W. Dittmann  
Lynn M. Terrebonne  
PAUL, HASTINGS, JANOFKY & WALKER LLP  
75 East 55th Street  
New York, NY 10022  
(212) 318-6000

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**SEPRACOR INC.,**

**Plaintiff,**

**v.**

**TEVA PHARMACEUTICALS USA, INC.,  
et al.,**

**Defendants.**

**Civil Action No. 09-1302 (DMC)(MF)**

**Hon. Dennis M. Cavanaugh, U.S.D.J.  
Hon. Mark Falk, U.S.M.J.**

**(Filed Electronically)**

**STIPULATION AND ~~PROPOSED~~ ORDER OF INFRINGEMENT**

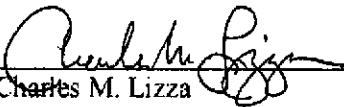
IT IS HEREBY STIPULATED AND AGREED, between Plaintiff Sepracor Inc.

("Sepracor"), by their undersigned counsel, and Defendant Teva Pharmaceuticals USA, Inc.

("Teva"), by their undersigned counsel, that:

1. The eszopiclone tablet products described in Teva's Abbreviated New Drug Application No. 91-169 ("ANDA No. 91-169") fall within the scope, either literally and/or under the doctrine of equivalents, of claim 1 of United States Patent No. 6,319,926 ("the '926 patent"), claims 1, 2, and 8 of United States Patent No. 6,444,673 ("the '673 patent"), claims 1, 2, and 6-7 of United States Patent No. 6,864,257 ("the '257 patent") and claims 1-5 of United States Patent No. 7,381,724 ("the '724 patent") (collectively, "the asserted claims").
2. In the event the asserted claims are not found invalid or unenforceable, the making using, offering for sale, selling, or importation into the United States of the eszopiclone tablet products described in Teva's ANDA No. 91-169 would constitute infringement of the asserted claims.
3. Sepracor and Teva hereby agree that neither party will seek any additional fact discovery from the other, including, but not limited to, the Teva Israel documents and 30(b)(6) deposition testimony addressed in the parties' letters to the Court submitted in August and September 2010.
4. This Stipulation is applicable only for purposes of this action and cannot be used by either party as evidence against the other party in any other lawsuit or proceeding, or with respect to any other patent or product.

Dated: September 9, 2010

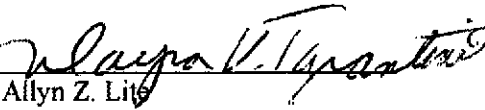
By:   
Charles M. Lizza  
William C. Baton  
SAUL EWING LLP  
One Riverfront Plaza  
Newark, New Jersey 07102  
(973) 286-6700

OF COUNSEL:

Joseph M. O'Malley, Jr.  
Bruce M. Wexler  
David M. Conca  
Eric W. Dittmann  
Lynn M. Terrebonne  
PAUL, HASTINGS, JANOFSKY  
& WALKER LLP  
75 E. 55th Street  
New York, New York 10022  
(212) 318-6000

*Attorneys for Plaintiff  
Sepracor Inc.*

Dated: September 9, 2010

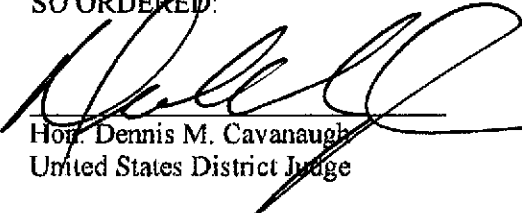
By:   
Allyn Z. Lits  
Mayra V. Tarantino  
LITE DEPALMA GREENBERG LLC  
Two Gateway Center, 12th Floor  
Newark, NJ 07102  
(973) 623-3000

OF COUNSEL:

Mark D. Schuman  
Todd S. Werner  
Russell J. Rigby  
CARLSON, CASPERS, VANDENBURGH  
& LINDQUIST  
225 South Sixth Street, Suite 3200  
Minneapolis, MN 55402  
(612) 436-9600

*Attorneys for Defendant  
Teva Pharmaceuticals USA, Inc.*

SO ORDERED:

  
Hon. Dennis M. Cavanaugh  
United States District Judge

Date: 9/14/10